

# **PRELIMINARY REPORT OF COURT OF APPEALS RECORD PRODUCTION WORK GROUP**

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## **Record Production Work Group Members:**

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## **RECORD PRODUCTION WORK GROUP - PRELIMINARY REPORT**

### **I. Introductory Statement by Chairperson**

The work group has met on three occasions and the attendance and participation have been superb. The support of Court of Appeals staff, Kim Hauser, Sandra Mengel and Liz Rogers has been invaluable to the work group.

The purpose of our work group was to study and recommend methods of increasing efficiency and reducing delay in record production through statutory changes, court rule amendments and internal protocol changes at the Court of Appeals. The suggestions to date have been included in this preliminary report and some of the improvements recommended cannot have a definite number of delay reduction days tied to them. For example, requiring the court reporters/recorders identity and indication of whether a hearing was held as part of the regular entries on the Register of Actions will make identifying needed dates of transcripts easier and more efficient for all, but no specific days for delay reduction can be identified.

Other ideas can save specific days. For example, increasing the page rate for transcripts produced in less than 91 days can save a specific number of days across the board. Changing Court of Appeals protocol for enforcing production of late transcripts could save up to 30 days or more, but not in every case since not all transcripts are late.

In regard to the cost to the county for increased page rate for indigent defendants transcripts, we have had to contact each of our counties individually to obtain this information. The material is coming in, but slowly. Perhaps, SCAO should request this information to be reported each year.

It is my plan that the work group will conclude after no more than two more meetings, furnish a final report and then stay on hold for further instructions from the Chief Justice and the Chief Judge.

Thank you for allowing me to chair this important work group.

### **II. Statistical Analysis – Time Consumed by Record Production**

There are three major elements or steps in the record production process: A) the ordering of the transcript; B) the preparation of the transcript; and C) the filing of the lower court record.

## A. Ordering of Transcript

**Time to Order:** The appellant is expected to order the complete transcript within 28 days of filing of the claim of appeal or issuance of the order granting leave to appeal. IOP 7.210(B)(1)-1; see also MCR 7.204(C)(2) and 7.205(D)(3).

In appeals with transcript orders issued between 1/1/01 and 6/30/03, the first transcript order was issued on or before the date of filing of the claim of appeal or issuance of the order granting leave to appeal in 64% of the cases. In the remaining 36%, the first transcript order was issued on average within 27.3 days after the claim of appeal was filed or leave to appeal was granted. Below is a table showing the average number of days to issuance of the first transcript order based on case type. The transcripts in civil appeals are ordered on average in less than the 28 days allowed, while the transcripts in TPR and criminal appeals with retained counsel are ordered on average in more than the 28 days allowed.

### Average Days to Issuance of First Transcript Order

Tr Order Date	2001	2002	First 6 Months of 2003
All Case Types	26.6	28.9	25.0
Criminal*	50.3	42.8	53.9
Civil	23.7	25.7	18.1
TPR	21.9	29.8	31.1

\*This includes only retained counsel cases as in indigent cases with appointed counsel the trial and sentencing transcripts are ordered contemporaneously with the appointment of counsel and the filing of the claim of appeal.

**Number of Transcript Orders:** In many appeals, there is more than one transcript order. Transcripts may be ordered from multiple reporters on the same date or from the same reporter but on different dates. In appeals with transcript orders between 1/1/01 and 6/30/03, on average there were 1.6 transcript orders per appeal. Below is a table showing the average number of transcript orders per appeal.

### Average Number of Transcript Orders Per Appeal

Tr Order Date	2001	2002	First 6 Months of 2003
All Case Types	1.6	1.6	1.7
Criminal	1.9	1.9	2.0
Civil	1.3	1.3	1.3
TPR	1.8	2.0	1.8

## B. Filing of Transcripts

**Time to File:** The time allowed to file the transcript varies depending on the type of case. Transcripts ordered for an application for leave to appeal from an order granting or denying a motion to suppress evidence in a criminal case are due within 14 days of the date they were ordered. MCR 7.210(B)(3)(b)(i). Transcripts ordered in an appeal from a criminal conviction based on a plea are due within 28 days of the date they were ordered. MCR 7.210(B)(3)(b)(ii). Transcripts ordered in termination of parental rights (TPR) and custody appeals are due within 42 days of the date they were ordered. MCR 7.210(B)(3)(b)(iii). Transcripts ordered in other cases are due within 91 days of the date they were ordered. MCR 7.210(B)(3)(b)(iv).

**Average Time to File:** In TPR/custody appeals in which the complete transcript was filed between 1/1/01 and 6/30/03, the transcript was on average filed within 57.9 days of the first transcript order. In other appeals in which the transcript was due within 91 days and in which the complete transcript was filed between 1/1/01 and 6/30/03, the transcript was filed on average within 86.1 days of the first transcript order. Below are tables showing the average number of days to file the transcript by case type. The transcripts in TPR/custody appeals are filed on average in more than the 42 days allowed. The transcripts in civil appeals are filed on average in significantly less than the 91 days allowed, while the transcripts in criminal appeals are filed on average in significantly more than the 91 days allowed.

**Average Days to File Complete Transcript**

Tr Complete Date	2001	2002	First 6 Months of 2003
TPR/Custody	58.9	56.4	58.9
Criminal	99.0	108.0	122.3
Civil	72.0	67.3	64.9

## C. Filing of Lower Court Record

**Time to File:** The lower court record is to be filed with the Court of Appeals within 21 days after it is requested. MCR 7.210(G). A March 11, 2003, proposed rule amendment would reduce the time from 21 to 14 days. In appeals where the record was filed between 1/1/01 and 6/30/03, on average the record was filed within 22.6 days after it was requested. Below is a table showing the average number of days to file the lower court record following the initial request. The record in civil and criminal appeals is filed on average in less than the 21 days allowed, while the record in TPR appeals is filed on average in more than the 21 days allowed.

**Average Number of Days to File Lower Court Record**

<b>LC Record Filed</b>	<b>2001</b>	<b>2002</b>	<b>First 6 Months of 2003</b>
<b>All Case Types</b>	24.5	21.9	20.6
<b>Criminal</b>	24.9	21.2	16.9
<b>Civil</b>	22.1	21.1	18.3
<b>TPR</b>	31.0	26.6	34.0

**D. Time Consumed By The Entire Record Production Process**

The aggregate average time consumed by the record production process in civil appeals was 118 days in 2001, 114 days in 2002, and 101 days in the first six months of 2003.

The aggregate average time consumed by the record production process in criminal appeals with retained counsel was 174 days in 2001, 173 days in 2002, and 178 days in the first six months of 2003. The aggregate average time consumed by the record production process in indigent criminal appeals with appointed counsel (trial and sentencing transcripts ordered contemporaneously with the appointment of counsel and filing of the claim of appeal) was 124 days in 2001, 130 days in 2002, and 124 days in the first six months of 2003.

The aggregate average time consumed by the record production process in termination of parental rights appeals was 112 days in 2001, 113 days in 2002, and 124 days in the first six months of 2003.

Below are tables showing on average the time consumed in each element or step of the process as compared to the time allowed under the court rules. The record production process in civil appeals is completed on average in less than the time allowed, while the record production process in criminal and TPR/custody appeals is completed on average in more than the time allowed.

<b>Civil Appeals</b>	<b>2001</b>	<b>2002</b>	<b>First 6 months of 2003</b>	<b>Court Rule Requirements</b>
<b>Average Time to Order Transcript</b>	23.7	25.7	18.1	28
<b>Average Time to File Complete Transcript</b>	72.0	67.3	64.9	91
<b>Average Time to File Record</b>	22.1	21.1	18.3	21
<b>Average Total Time</b>	117.8	114.1	101.3	140

<b>Criminal Appeals</b>	<b>2001</b>	<b>2002</b>	<b>First 6 months of 2003</b>	<b>Court Rule Requirements</b>
<b>Average Time to Order Transcript*</b>	50.3	42.8	53.9	28
<b>Average Time to File Complete Transcript</b>	99.0	108.8	106.7	91
<b>Average Time to File Record</b>	24.9	21.2	16.9	21
<b>Average Total Time With Retained Counsel</b>	174.2	172.8	177.5	140
<b>Average Total Time With Appointed Counsel</b>	124	130	124	112

\*This includes only retained counsel cases as in indigent cases with appointed counsel the trial and sentencing transcripts are ordered contemporaneously with the appointment of counsel and filing of the claim of appeal.

<b>Termination of Parental Rights Appeals</b>	<b>2001</b>	<b>2002</b>	<b>First 6 months of 2003</b>	<b>Court Rule Requirements</b>
<b>Average Time to Order Transcript</b>	21.9	29.8	31.1	28
<b>Average Time to File Complete Transcript</b>	58.9	56.4	58.9	42
<b>Average Time to File Record</b>	31	26.6	34	21
<b>Average Total Time</b>	111.8	112.8	124.0	91

### **III. Possible Methods of Increasing Efficiency and Reducing Delay in Record Production Through Court Rule Amendments**

A. It is recommended that MCR 8.119(D)(1)(c) be amended to require the addition to the Register of Actions of the court reporter/recorder's identity and whether a hearing was held on the record. These additional requirements would allow the ordering party or court to more quickly and accurately identify the relevant hearing dates and responsible reporter/recorder and help to eliminate substantial delay which occurs when the reporter/recorder or hearing date is incorrectly identified.

B. It is recommended that MCR 7.210(B)(3)(a) be amended to require that the stenographer's certificate include a statement indicating whether the reporter/recorder was the reporter/recorder of record for each of the dates requested and the estimated number of pages requested. The work group anticipates that requiring the reporter/recorder to state in the stenographer's certificate whether they were the reporter/recorder for each of the dates requested

will ensure, early on in the transcript production process, that the transcript order has been directed to the proper reporter/recorder. Requiring the reporter/recorder to state the estimated number of pages requested will provide information valuable to the Court of Appeals in pursuing overdue transcripts.

C. It is recommended that MCR 6.425(F) be amended to require the trial judge to issue an order on a request for additional transcripts within 7 or 14 days of receipt of the request. The work group anticipates that this will speed issuance of orders for additional transcripts in criminal appeals with appointed counsel. Substantial delay occurs when the trial court fails to promptly rule on a request for production of additional transcripts.

D. The work group supports the amendments to MCR 7.210 proposed by the Court of Appeals as part of its delay reduction plan and assigned ADM File No. 2002-34. The proposed amendments would limit the transcript necessary for summary disposition appeals and shorten the time for filing those transcripts from 91 to 42 days, and shorten the time to forward the lower court record in all appeals from 21 to 14 days.

#### **IV. Possible Legislative Changes to Reduce Delay**

A. On March 4, 2003, Senator Switalski introduced Senate Bill No. 245 which would increase the page rate paid to court reporters/recorders for transcripts from \$1.75 to \$3.00 per page for an original and from \$.30 to \$.50 per page for copies.

B. Companion legislation will authorize additional fines/costs to be levied by the trial judges which revenue would go into a fund to be used to defray the additional costs to the counties occasioned by the page rate increase.

C. The exact cost of the page rate increase to the counties is unknown at present, but data on indigent transcript costs per county is being sought. This information is not sent to SCAO under any existing form so the work group is forced to go county by county to find out the indigent transcript costs that they have incurred in recent years.

D. It is the consensus of the work group that the page rate increase will help to reduce delay by providing an incentive for reporters/recorders to timely file the transcript. The work group is considering recommending that the increased page rate of \$3.00 per page for an original and \$.50 per page for copies only be paid to reporters/recorders who file all of the transcripts ordered from them in an individual case within the time provided by the court rules. Reporters/Recorders, who fail to file all of the transcripts ordered from them in an individual case within the time provided by the court rules would be paid at the prior rate of \$1.75 per page for an original and \$.30 per page for copies. Alternatively, the work group is considering recommending that the increased page rate only be paid when all of the transcripts ordered from a reporter/recorder in an individual case

are filed early. For example, when transcripts due in 91 days are filed within 77 days.

It is also the consensus of the work group that the page rate increase will give reporters/recorders sufficient funds to hire typists to assist with transcript production and encourage reporters/recorders to increase their skill level and to take advantage of newer equipment and evolving technology.

## **V. Internal Protocol Changes at the Court of Appeals**

Consideration is being given to possible options for streamlining the Court of Appeals enforcement procedures for overdue transcripts as under the current procedure an additional two months may be consumed in securing the filing of overdue transcripts. Under the current practice, a reminder postcard is sent to the reporter when the transcript is due. Approximately, two weeks after the transcript is due, a letter is sent to appellant's counsel advising that the matter is eligible for involuntary dismissal or other action under MCR 7.217 for failure to secure the timely filing of the transcript. The appellant is given 21 days from the date of the letter to secure the filing of the transcript. If the appellant is unable to secure the filing of the transcript, the preferred response is the filing of a motion for an order requiring the court reporter/recorder to show cause. Such a motion is eligible for submission to a panel on the first Tuesday seven days after the date of service. If the motion is granted, the reporter/recorder is generally given another week or two to complete the transcript before they are required to appear to show cause.

A. Since the fall of 2002, the Court of Appeals has been experimenting with an alternative process in termination of parental rights appeals from the Juvenile Division of Wayne Circuit Court. Rather than sending an involuntary dismissal warning letter to appellant's counsel, the Court has issued orders to show cause on its own motion when the transcript is overdue. This process, although time consuming for Court of Appeals staff, has significantly reduced delay in securing the filing of overdue transcripts. The work group is considering recommending that this process be expanded to all termination of parental rights appeals. Consideration is also being given to recommending expansion of this process to criminal appeals with appointed counsel.

B. The work group is also exploring other avenues for streamlining the Court of Appeals enforcement process including:

1. Sending the involuntary dismissal warning letter 7 rather than 14 days after the transcript is due; and
2. Sending notice to the trial judge when a transcript is overdue.

## **V. ADDITIONAL MEETINGS AND FINAL REPORT**

The work group plans to have one or two more meetings at the most and then issue a final report. This should be completed by the middle of January.